

# ARTICLES

## LEGAL READING AND SUCCESS IN LAW SCHOOL: THE READING STRATEGIES OF LAW STUDENTS WITH ATTENTION DEFICIT DISORDER (ADD)

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### ABSTRACT

*The new reality in legal education is that a certain percentage of our students will come to us with Attention Deficit Disorder (ADD) or with another learning disability, either disclosed or undisclosed. Yet there has been little empirical research on how law students with learning disabilities read and understand the law. This study examined how three law students with ADD read a judicial opinion. The results suggested a relationship between successful law school performance and the use of problematizing and rhetorical reading strategies; and less successful law school performance and the use of default reading strategies. Further, the results suggest that law students with ADD can be successful and productive members of any law school community. Simply because a law student learns differently does not mean that the student cannot learn effectively. Finally, becoming an effective legal reader may be one of the most important ways law students with ADD can enhance their law school success.*

### I. INTRODUCTION

The demographics of the students attending law schools have changed dramatically in the past several decades.<sup>1</sup> More law students than ever

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1. See Susan Johanne Adams, *Because They're Otherwise Qualified: Accommodating Learning Disabled Law Student Writers*, 46 J. LEGAL EDUC. 189, 196 (1996) (stating that "[t]he pool of diagnosed [learning disabled] students becoming eligible for postsecondary education is increasing rapidly"). The author explains that learning disabled (LD) individuals often have normal IQs. *Id.* at 191. In many cases, LD persons actually possess superior intelligence than the rest of the population. *Id.* Therefore, it is important for educators to keep these facts in mind when designing educational programs aimed at students with learning disabilities. *Id.* at 194; Lisa Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools in the Law School Context*, 26 J.L. & EDUC. 31, 31 (1997) (contending that law students with learning disabilities "make up one of the fastest growing segments of the law student population"). Between 1990 and 1993, the number of individuals with learning disabilities who took the LSAT with special accommodations increased by over one hundred percent. Lisa Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools in the Law School Context*, 26 J.L. & EDUC. 31, 31 (1997). Those special accommodations were usually time extensions. *Id.* During the 1994-1995 testing year, Law Services received 785 requests to take the LSAT under special conditions. *Id.*; see also James R. P. Ogloff et al., *More Than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34

before begin law school diagnosed with a learning disability.<sup>2</sup> In fact, “[i]n 1996, over nine percent of all college freshmen documented a disability and . . . [w]ith advances in knowledge about . . . different learning styles [and] appropriate accommodations, . . . many students [with learning disabilities] are matriculating through undergraduate programs with a high degree of success.”<sup>3</sup> Many of those successful students with learning disabilities will attend law school and become lawyers.<sup>4</sup>

As a result, “[a] recent American Bar Association law school enrollment survey revealed that as recently as 2002, law schools provided accommodations for both physical and learning disabilities for [2655] law students out of a total of 132,885 students, or 1.9%.”<sup>5</sup> Although these students may learn differently than traditional law students, they are a reality (and an important part of) legal education.

The diagnosis of Attention Deficit Disorder (ADD) has also increased over the years. In a recent survey, 6.4% of the 16.5 million undergraduate students in the United States reported having ADD.<sup>6</sup> This suggests that there are over one million students who report having ADD to universities.<sup>7</sup> Just as many students may have ADD and choose not to report it, or they may be unaware that they are affected by the disability.<sup>8</sup> We can safely assume, however, that most law school classes will include

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CREIGHTON L. REV. 73, 86 (2000) (reporting statistics about gender and minority status in law schools).

2. See M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Law School Students*, 41 J. LEGAL EDUC. 317, 320 (1991) (“As the number of learning disabled students completing primary and secondary school increases, more learning disabled students seek admission to colleges and then graduate schools.”).

3. Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 121–22 (2005) (footnote omitted) (explaining that students with learning disabilities are becoming more successful, as schools are beginning to accommodate them). It is logical to expect that students with learning disabilities who were successful undergraduate students will begin to pursue a legal education in higher numbers than in years past. *Id.* at 122. Accordingly, these learning disabled students will expect law schools to offer accommodations to their learning needs, as their undergraduate programs did. *Id.*

4. *Id.* at 122.

5. *Id.* (footnote omitted) “The exact numbers of Americans with disabilities is difficult to obtain for a number of reasons [including the fact that] the definition of disability varies, depending upon the context . . . [and] people [either] do not self-identify or over-identify.” *Id.* at n.31 (footnote omitted).

6. Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 350 (2006) (footnote omitted).

7. *Id.*

8. *Id.*

students with ADD, and it is essential for legal educators to be equipped to teach those students.<sup>9</sup>

But how do law students with learning differences *learn* most effectively? Up to this point, there has been little empirical research on how law students with ADD or other learning disabilities approach law school.<sup>10</sup> This Article describes an empirical study that examined the way

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9. *Id.* at 349–50 (describing the role law professors can play in assisting students with ADD). One way to better equip law professors is to educate them about various learning styles. *Id.* This will help law students use classroom materials in ways that help them learn. *Id.* In addition, this adaptation may further benefit non-ADD students with diverse learning styles. *Id.*

10. In 2008, I published a companion study that examined the experiences of three law students with ADD. Leah M. Christensen, *Law Students Who Learn Differently: A Narrative Case Study of Three Law Students with Attention Deficit Disorder (ADD)*, 21 J.L. & HEALTH 45, 45 (2008) (examining how law students with ADD view their law school experiences). This study found that law students with ADD felt isolated in law school. *Id.* Second, law students with ADD who were more successful understood the manner in which they learned best, whereas less successful law students did not. *Id.* Third, the predominantly used Socratic Method inhibited students' classroom learning. *Id.* at 45–46. Finally, the students felt uncertain about practicing as lawyers with ADD. *Id.* at 46. Other than this 2008 study, the empirical research is scarce with regard to law students and learning disabilities. See, e.g., Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 349 (2006) (indicating that most law school classes will include students with ADD and explaining the traits of ADD law students); Laura F. Rothstein, *Higher Education and Disabilities: Trends and Developments*, 27 STETSON L. REV. 119, 119–20 (1997) (identifying recent trends in case law and enforcement activity under the Americans with Disabilities Act and predicting the direction of future developments). Some of the issues facing students with disabilities, such as how to identify and accommodate students with learning disabilities, remain unsettled despite much activity in those areas of debate. Laura F. Rothstein, *Higher Education and Disabilities: Trends and Developments*, 27 STETSON L. REV. 119, 120 (1997). Students and faculty who face mental health issues and substance abuse problems likewise present new questions for institutions of higher learning. *Id.*; Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 5 (1999) (outlining the nature and effect of disability for law school students). Since a disabled student may have unique needs that differ from those of a non-disabled student, a law school may suggest that a disabled student engage in activities not required of a non-disabled student. Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 6 (1999). Such a suggestion is neither unjust nor discriminatory if the activity is reasonable, logical, and professionally acceptable. *Id.* Similarly, a law school may offer some relevant services and opportunities only to disabled students. *Id.*; Donald H. Stone, *What Law Schools Are Doing to Accommodate Students with Learning Disabilities*, 42 S. TEX. L. REV. 19, 24 (2000) (analyzing court decisions regarding reasonable accommodations for disabled students during law school examinations); Scott Weiss, *Contemplating Greatness: Learning Disabilities and the Practice of Law*, 6 SCHOLAR 219, 220 (2004) (addressing how students with ADD approach law school). Accommodations for law students with learning disabilities include granting extra time for final exams and providing those students with transcribed class notes. Scott Weiss, *Contemplating Greatness: Learning Disabilities and the Practice of Law*, 6 SCHOLAR 219,

in which law students with ADD read a judicial opinion. The study focused on the reading strategies of three law students with ADD and compared their use of reading strategies to those of traditionally learning<sup>11</sup> first-year law students. In the study, the successful law students with ADD read the case very similarly to the higher performing, traditionally learning students.<sup>12</sup> Likewise, the struggling law student with ADD read the opinion similarly to lower performing, traditionally learning law students. Therefore, the way in which these law students read (and their choices of reading strategies) seemed to impact their overall academic success to a greater degree than the fact that the students had ADD.

These study results suggest several interesting conclusions. First, these results reaffirm the prior research on legal reading: the way in which law students read legal text—whether students learn differently or traditionally—impacts their law school success.<sup>13</sup> Second, the results suggest that

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220 (2004). Depending on whether a student's disability is permanent or temporary, the student may also be eligible for accommodations on the bar exam. *Id.* at 244.

11. By "traditionally learning," I mean law students who have not been diagnosed with a learning disability.

12. See discussion in Part III of this Article.

13. See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 604 (2007) (finding that reading strategies statistically correlated to law student success). Reading legal opinions to maximize time efficiency and comprehension is one of the most critical skills for any law student. *Id.* at 603. As mentioned, few studies examine how law students study judicial opinions, but understanding how law students comprehend legal text is a positive step toward helping them achieve success in their law school endeavors. *Id.* at 604; cf. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 155 (1995) (finding that law students in the upper quartile of their class read a law review article using more problematizing strategies than law students in the lower quartile of their class); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008) (determining that the more successful legal writing students read differently). In fact, students who succeeded more in upper-level legal writing courses tended to have the lowest GPAs from their undergraduate schools. Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 668 (2008); Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 409 (1987) (finding that expert legal readers read differently than novice readers). Legal reading is a large hurdle for new law students to overcome because most never receive any instruction for case reading. Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 409 (1987); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 144–45 (1997) (analyzing the different reading strategies used by students in an alternative admissions program). Research has shown that high-performing students read assigned opinions differently than other students. Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 140 (1997); James F. Stratman, *When Law Students Read Cases:*

law students with ADD can be successful and productive members of any law school community. Simply because a law student learns *differently* does not mean that the student cannot learn *effectively*. Further, becoming an effective legal reader may be one of the most important ways law students with ADD can enhance their success in law school.

Part I of this Article describes my first legal reading study, which examined the way in which traditionally learning law students read a judicial opinion. This first study provides the framework and basis for comparison to the present study. Part II describes the current study on law students with ADD, including the study participants, the tasks they were asked to perform, and the methods that were used to collect and analyze the data. Part III explores the present study results and sets out examples from the students' reading transcripts. Part IV proposes possible conclusions that might be drawn from the study results, and Part V offers several observations on how law students with learning differences might apply these findings to maximize the effectiveness of their legal reading.

## II. LEGAL READING AND LAW SCHOOL SUCCESS: TRADITIONALLY LEARNING LAW STUDENTS

Reading judicial opinions is central to both law school and the practice of law, yet we are only beginning to explore how law students read legal text. Legal reading is a challenging task for a new law student.<sup>14</sup> In order to comprehend legal text, a reader needs knowledge of legal terminology and an understanding of case structure and legal theory.<sup>15</sup> Although there are many students who adapt quickly to legal reading, there are others who continue to struggle with legal reading throughout law school. What causes this struggle? Does the way in which students read impact

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*Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57, 57 (2002) (finding that law students read differently when given a role or purpose for reading). On the whole, students who read for an advocacy purpose performed much better than students who read for class recitation. James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57, 57 (2002). Some examples of typical expert reading behaviors include attention to context markers, rereading, underlining, and synthesizing. *Id.* at 61.

14. Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 409 (1987). Part of the reason legal reading is so difficult for beginners is that students are ordinarily not given instruction as to how to approach case reading. *Id.*

15. Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 226 (1997). Since reading is essentially a constructive process, interpretation is built from the knowledge the reader already possesses. *Id.* If a reader lacks knowledge, then he or she will be unable to interpret the new information. *Id.*

their law school success? Can we teach our students the types of reading strategies used by the most successful law students?

In order to answer these questions, I conducted an empirical study on legal reading (the 2007 reading study) that examined how first-year law students read a judicial opinion and whether their use of reading strategies impacted their law school success.<sup>16</sup> The study explored whether there was a correlation between the way in which first-year law students in the top fifty percent and bottom fifty percent of their class read a judicial opinion and their law school GPAs.<sup>17</sup> I found that even when students had gone through identical first-semester classes, “the more successful law students read the judicial opinions differently than those students who [were] less successful” after the first semester of law school.<sup>18</sup> Further, the results of the study suggested that “a correlation exists between the reading strategies of the top law students and their [first-semester] grades.”<sup>19</sup> This section will explore the background and results of the 2007 reading study in more detail.

The 2007 reading study involved twenty-four first-year law students.<sup>20</sup> I divided the students into two separate groups: twelve “Higher Performing” (HP) students, who were in the top fifty percent of their law school class, and twelve “Lower Performing” (LP) students, who were in the bottom fifty percent of their law school class.<sup>21</sup>

I asked the students to read a judicial opinion authored by the Indiana Supreme Court.<sup>22</sup> The students were instructed to read the text of the

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16. See generally Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603 (2007) (reporting the results of the 2007 reading study).

17. *Id.* at 604. Among other things, the study sought to question legal educators’ fundamental assumptions about law students. *Id.* at 606. Many of these educators assume that a student’s reading skills acquired prior to law school translate well in the study of law; in reality, the opposite is often the case. *Id.*

18. *Id.* at 604.

19. *Id.*

20. *Id.* at 615. The students who agreed to participate in the study had recently finished their first year of law school at a “private, urban U.S. law school.” *Id.* The students in both groups had comparable LSAT scores and undergraduate GPAs. *Id.*

21. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 615 (2007). Of the HP students, ten were in the top twenty-five percent of their class. *Id.* Of the LP students, eight were among the bottom twenty-five percent in their class. *Id.* Despite the fact that these students had similar LSAT scores and undergraduate GPAs, they performed very differently in their first year of law school. *Id.*

22. The opinion was *In re Thonert*, 733 N.E.2d 932 (Ind. 2000), a state disciplinary action against an attorney. The case was chosen for the students to read because it was representative of a typical opinion that an attorney might need to read in his or her practice. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*,

case aloud, stopping every sentence or two to tell me what they were thinking.<sup>23</sup> I recorded the students as they performed the “think-aloud.”<sup>24</sup> I also instructed the students to read the case with a particular purpose in mind:

Read the following legal text assuming that you are a practicing attorney and that you are reading the opinion to prepare for a meeting with a client who has a case that is similar to the facts of the case you are reading.<sup>25</sup>

I gave the students this specific purpose because I wanted to find out whether reading with the purpose of preparing for a client meeting changed the way in which students read the case.<sup>26</sup>

The think-aloud protocols were transcribed and each statement coded.<sup>27</sup> For each statement a reader made during the think-aloud protocol, I used a code to describe the particular “move” made by the reader at that point in the text, i.e., underlining, paraphrasing, evaluating, hypothesizing, questioning, etc.<sup>28</sup> I placed each of the reader’s moves into one of three larger categories: (1) problematizing reading strategies; (2) rhetorical reading strategies; and (3) default reading strategies.<sup>29</sup>

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30 SEATTLE U. L. REV. 603, 616 (2007). The case also included many of the common elements of a judicial opinion, including “headnotes, keynotes, footnotes, [and] a synopsis.” *Id.* at 617.

23. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 618 (2007).

24. *Id.* (explaining the “think-aloud” procedure). “The [think-aloud] or verbal report is an important research tool for obtaining accurate information about cognitive processes that cannot be investigated directly.” *Id.* at 617 (footnote omitted). The importance of the think-aloud procedure is that students state their thoughts as they read, not after the fact. *Id.*; cf. Suzanne E. Wade et al., *An Analysis of Spontaneous Study Strategies*, 25 READING RES. Q. 147, 150 (1990) (explaining the benefits of using verbal self-reports, which allow for the examination of cognitive behavior).

25. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 619 (2007).

26. *Id.*

27. *Id.* After the audio from each interview was transcribed, the transcripts were labeled with random numbers in order to preserve the students’ privacy. *Id.* Then, the transcripts were categorized based on three types of text: “oral reading of the actual text, silent reading, and participant verbal responses.” *Id.* As part of the analysis of the results, a “descriptive phrase” was attached to each of the reader’s responses. *Id.* For a more detailed explanation of how the statements were coded, see *id.* at 619–25.

28. *Id.* (explaining the codification process of “moves” conducted by the test subjects). For a more detailed listing of the “moves” identified, see *id.* at 648 app. A.

29. *Id.* at 624. A fourth category was labeled “other.” *Id.* Moves in the “other” category include pausing to explain “typical processes,” such as skimming certain parts of the text or book-briefing. *Id.* Also, whenever readers reported distractions, these moves were placed in the “other” category. *Id.*



The first category of reading strategies was problematizing reading strategies. Reader responses “that fell within the problematizing category were purposeful or ‘strategic.’”<sup>30</sup> The participants actively engaged in the text and responded to the text by “drawing a tentative conclusion,” “hypothesizing,” “planning,” “synthesizing,” or “predicting.”<sup>31</sup>

The second category was rhetorical reading strategies. Moves were rhetorical “when readers examined the text in an ‘evaluative’ way or when readers moved outside the text ‘into the realm of . . . personal knowledge.’”<sup>32</sup> In the 2007 reading study, I categorized the following moves as rhetorical: “evaluating, connecting with prior experience, contextualizing, and connecting with purpose.”<sup>33</sup>

The third category was called default reading strategies. Readers used default reading strategies when they “moved through the text in a linear progression,” which included “paraphrasing” or “underlining” text.<sup>34</sup> In addition, default strategies also included making “margin notes,” “noting aspects of structure,” and “highlighting” text.<sup>35</sup> Default strategies are different from problematizing strategies because of the unproblematic nature of the process.<sup>36</sup> To put it another way, “verbal responses in the default category were not ‘tied to explicit questions or hypotheses.’”<sup>37</sup>

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30. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 622 (2007). Other studies have merged the ideas of “problem solving” and “problem posing” into the broader term “problematizing.” *Id.* (footnotes omitted). Students in the process of problematizing are “actively engaged in the text.” *Id.*

31. *Id.*

32. *Id.* at 623.

33. *Id.* at 623–24. The student reader “both evaluated the text of the opinion and connected with the underlying purpose of the reading as he considered how the text related to his hypothetical client’s case.” *Id.* at 624. The study categorized “connecting with purpose” as a rhetorical strategy “because when readers connected to the given purpose of the reading, they took a step ‘beyond the text itself.’” *Id.* at 623; cf. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 161 (1995) (listing the different kinds of rhetorical reading strategies). Rhetorical strategies are extremely helpful because they make the reader think beyond the text itself. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 161 (1995).

34. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 622 (2007).

35. *Id.* at 622–23.

36. *Id.* Students engage in default reading strategies when they summarize the text and make notes about what they are reading. *Id.* at 622. Default strategies do not involve in-depth problem solving skills. *Id.*

37. *Id.* at 623.

Instead, readers employing default strategies “usually noted something about the structure of the case and/or paraphrased or recited the text.”<sup>38</sup>

A database was created to help analyze the frequency and type of reading strategy used by each participant.<sup>39</sup> These individual strategies, or moves, were placed into one of the three main categories described above, i.e., problematizing, rhetorical, or default reading strategies.<sup>40</sup> The percentage of time each group spent using each reading strategy was then compared.<sup>41</sup>

I found that there were significant differences in how the HP students and the LP students read the judicial opinion.<sup>42</sup>

The HP students spent more time engaged in problematizing and rhetorical strategies, and significantly less time engaged in default reading strategies. In contrast, the LP students spent the majority of their reading time using default strategies, and only a small percentage of their time using problematizing and rhetorical reading strategies.<sup>43</sup>

The mean time spent by HP students employing particular reading strategies were: 21.43% for default strategies, 45.70% for problematizing strategies, and 32.87% for rhetorical strategies.<sup>44</sup> In contrast, the LP students spent a mean time of 77.48% engaged in default strategies, 12.54% in problematizing strategies, and 9.56% in rhetorical strategies.<sup>45</sup>

The results of the 2007 reading study are summarized in Table 1.

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38. *Id.*

39. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 624 (2007).

40. *Id.*

41. *Id.*

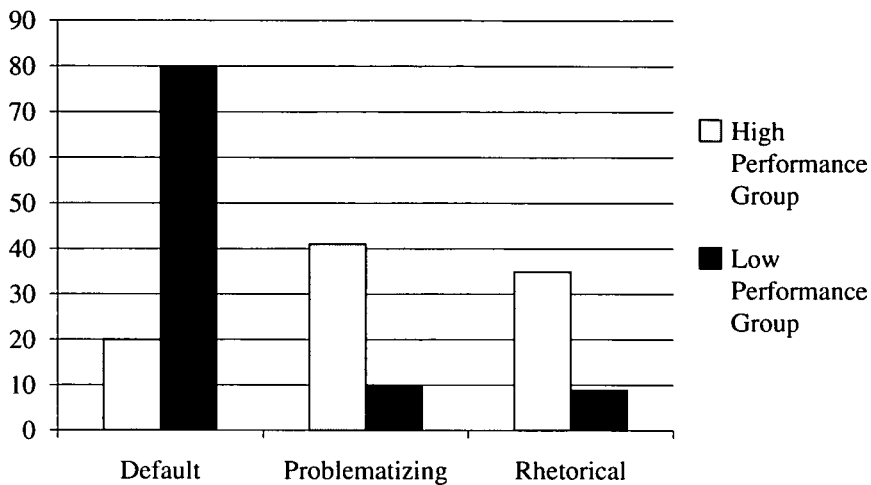
42. *Id.* at 625.

43. *Id.*

44. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 625 (2007).

45. *Id.*

TABLE 1: RESULTS OF THE CHRISTENSEN 2007 READING STUDY



These results illustrated that although the most successful law students used all three types of reading strategies, they spent much more of their reading time engaged in higher-level analytical reading, i.e., the use of problematizing and rhetorical reading strategies.<sup>46</sup> In contrast, LP students spent most of their reading time using default reading strategies and failed to engage with the text in the same way as the HP readers.<sup>47</sup>

The other significant finding of the 2007 reading study was a statistical correlation between the way in which the law students read (i.e., their use of reading strategies) and their law school GPAs.<sup>48</sup> Notably, there was no correlation between undergraduate GPA (UGPA) and LSAT scores with the tendency to use a particular reading strategy.<sup>49</sup> In other words, the more time students spent using problematizing and rhetorical reading strategies, the higher their first-semester GPA in law school.<sup>50</sup>

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46. *Id.*

47. *Id.*

48. *Id.* at 626. Another crucial skill in law school is being able to read a court opinion quickly and accurately. *Id.* at 603. Despite the importance of this skill, relatively little empirical research has focused on the manner in which law students read legal texts. *Id.*

49. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 626 (2007). Legal educators should recognize that some law students are not good readers, despite their success before law school. *Id.* at 647. In addition, success before law school does not mean that a student will be successful while studying law. *Id.* UGPAs and LSAT scores, which have been relied upon as traditional predictors of law student success, only provide some relevant information. *Id.*

50. *Id.* at 627 (highlighting a connection between academic success during the first semester of law school and the use of higher-level reading strategies).

### III. THE PRESENT STUDY: LAW STUDENTS WITH ATTENTION DEFICIT DISORDER (ADD)

Because law students with learning disabilities are a new reality in legal education, I wanted to explore whether law students with learning differences approached legal reading differently than traditionally learning law students. Since I had already completed the 2007 reading study, it made sense to replicate that study using a new student population for comparison: law students with ADD.

As I began the second study, I hypothesized that law students with ADD might read a judicial opinion differently than traditionally learning law students. The basis for my belief was that ADD is a neurologically based disorder<sup>51</sup> and, in some people, the condition can impair the executive functions of the brain that “pertain to how people learn as well as to how they function in [everyday] life.”<sup>52</sup> Because attentiveness and active engagement with material are affected by the disorder, ADD students may have difficulty with “making connections between new information and prior knowledge and organizing this information in a useful way.”<sup>53</sup> Since all of these skills are central to legal reading, I hypothesized that having ADD might affect the way in which these law students approached legal text.

My hypothesis, however, turned out to be incorrect—at least partially. The results of the present study (involving law students with ADD) were very similar to the results of the 2007 reading study (involving law students without ADD).<sup>54</sup> In other words, law students with ADD seemed to approach legal reading similarly to law students without ADD. The HP law students with ADD read the judicial opinion similarly to the HP students in the 2007 reading study. Likewise, the LP law student with ADD read the opinion using similar reading strategies as the LP students in the 2007 reading study. Accordingly, reading *differences* existed between HP and LP law students generally, not simply between those students with ADD and those without ADD.

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51. Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 139 (2005). ADD is characterized by inappropriate levels of inattentiveness, impulsiveness, and distractiveness. *Id.* Between two and four percent of adults have the disorder. *Id.*

52. Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 354 (2006) (footnote omitted).

53. *Id.* at 355 (footnotes omitted) (highlighting the effect ADD has on a student's academic achievement). Because students with ADD have trouble making these connections, they are more likely than non-ADD students to have difficulty learning and to face lower academic achievement. *Id.* “[R]ather than applying the case holdings to complex fact patterns,” LP students just repetitively recite when called upon in class. *Id.*

54. See discussion of the 2007 reading study in Part II of this Article.

This section will explore the methodology of the present study,<sup>55</sup> including a description of the participants, the think-aloud protocol, and the coding scheme used to analyze the data.

### A. *The Participants*

The participants in this study were three law students who had been diagnosed with ADD prior to law school.<sup>56</sup> At the time of the study, the students were enrolled in a private, regional law school in the United States.<sup>57</sup> Two of the students were second-year students and one student had just completed her first year of law school. Only one of the students had requested accommodations in law school for her learning disability.

The three students had LSAT scores between 148 and 155 and UGPAs between 2.89 and 3.64.<sup>58</sup> Once in law school, the students took the same classes during their first year.<sup>59</sup> The three students were selected from a group of six volunteers for the study after information about the study was released by the law school's Office of Academic Achievement.<sup>60</sup> None of the students who participated were paid.

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55. Database listing frequency and types of reading strategies used by participants is on file with *The Scholar: St. Mary's Law Review on Minority Issues*.

56. "Although students with learning disabilities successfully admitted into law school are usually very bright, their learning disability results in a 'discrepancy between aptitude and achievement,' despite a high level of intelligence." Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 137-38 (2005) (quoting Suzanne Wilhelm, *Accommodating Mental Disabilities in Higher Education: A Practical Guide to ADA Requirements*, 32 J. LEGAL EDUC. 217, 229 (2003)). Students with learning disabilities in law school are often much more intelligent than their grades might reflect. *Id.* at 138. The Individuals with Disabilities Education Act (IDEA) defines a "specific learning disability" as "a disorder in [one] or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." Individuals with Disabilities Education Act (IDEA) § 602(30)(A), 20 U.S.C. § 1401(30)(A) (2006). Included within this definition are "such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia." *Id.* § 602(30)(B).

57. To protect the identity of the students, the students' real names have not been used, and the year that the study was conducted has not been indicated.

58. The LSAT scores, undergraduate GPAs, and law school GPAs were obtained from the law school's registrar with the written consent of the students.

59. The students took the same first-year curriculum, but they may have been taught by different professors. The two second-year students had different classes in their second year of law school.

60. The sample size was small but not atypical for a qualitative research study. For example, see Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 145 (1997) (examining the reading strategies of four law students). In the present study, the task of contacting law students with learning disabilities was very difficult because there was a need to

Two out of the three students in this study were very successful law students—their law school GPAs were in the top five percent and thirty percent of their respective law school classes. Alexa, a second-year law student with ADD, was in the top five percent of her law school class at the end of her second year. Kelsey, a first-year law student with ADD, was in the top thirty percent of her law school class at the end of her first year. In contrast, the third student, Baker, had just completed his second year of law school and was in the bottom fifteen percent of his law school class.

Table 2 illustrates the incoming data of the study participants.

TABLE 2: STUDY PARTICIPANTS

Participant	Disability	UGPA	LSAT	LGPA	Law School Class
Alexa	ADD	3.64	155	3.69 (top 5%)	2L
Kelsey	ADD	2.89	155	2.94 (top 30%)	1L
Baker	ADD	3.44	148	2.51 (bottom 15%)	2L

#### B. *The Task*

As in the 2007 reading study, I had the students read the same Indiana Supreme Court decision: *In re Thonert*.<sup>61</sup>

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retain anonymity. In going through the complex university Internal Review Board (Board) process to obtain permission to conduct the study, I found that the Board was concerned that the study sought to obtain information from a “vulnerable” population (i.e., students with learning and/or other disabilities). Ultimately, the students signed several forms giving their informed consent to participate in the study. In addition, the students granted their permission to release their test scores to me for the purposes of the study. However, the Board required that I go through the Office of Academic Achievement to send an e-mail solicitation from the office to the students informing them of the study. I did not contact any of the students directly; they contacted me to express their interest in learning more about participation in the study. There were only six students out of the total law school population at that time that had requested accommodations for a learning or other disability. All six of these students volunteered for the study. I chose three students for this study because: (1) there was a substantial spread between their LSAT scores and law school GPAs, and (2) each student had been diagnosed with ADD and no other learning disability. I decided, for data reliability purposes, to focus solely on law students with ADD.

61. 733 N.E.2d 932 (Ind. 2000). My specific reasons for choosing this case were that: (1) the opinion was relatively short so that testing could be completed within one hour, but the case was longer than one page so that readers could either look ahead or look back as needed; (2) the case involved both a subject matter and a procedural posture that was unfamiliar to most first-year law students (the case was a per curiam decision by the Indiana Supreme Court reviewing a disciplinary proceeding against an attorney); (3) the case represented a typical judicial opinion that an attorney might read in the practice of law;

I asked the students to read aloud using the strategies they typically use when reading a case. I gave the students the same purpose for reading as in the 2007 reading study:

Read the following legal text assuming that you are a practicing attorney and that you are reading the opinion to prepare for a meeting with a client who has a case that is similar to the facts of the case you are reading.

I left the room to allow each student to perform the think-aloud protocol. After a participant finished the think-aloud, I came back into the room and completed a short interview.

### C. Analysis and Coding of the Data

The think-aloud protocols were transcribed, and each statement was coded in the same manner as in the 2007 reading study.<sup>62</sup> For each statement a reader made during the think-aloud protocol, I used a code to describe the particular “move” made by the reader. Like the 2007 reading study, I placed each of the reader’s moves into one of three larger categories: (1) default reading strategies; (2) problematizing reading strategies; or (3) rhetorical reading strategies.<sup>63</sup>

Readers used default reading strategies when they were “paraphrasing,” “making margin notes,” “underlining,” or “highlighting” the text.<sup>64</sup> Moves that fell within the problematizing category included “drawing a tentative conclusion,” “hypothesizing,” “planning,” “synthesizing,” and “predicting.”<sup>65</sup> Rhetorical moves included “evaluating,” “connecting with prior experience,” “contextualizing,” and “connecting with purpose.”<sup>66</sup>

Once again, I created a database to analyze the frequency and type of reading strategy used by each participant.<sup>67</sup> I then placed the reading moves into one of the three categories described above and compared the

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and (4) the case was unedited and contained structural components typically found in a published opinion, e.g., headnotes, keynotes, footnotes, a synopsis, etc.

62. See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 620–25 (2007) (describing the coding method in detail).

63. Cf. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 160–61 (1995) (analyzing the different reading techniques of advanced readers in law school). I also added a fourth category, which I called “other.”

64. *Id.* at 160.

65. *Id.*

66. *Id.* at 161 (demonstrating the different types of rhetorical strategies). I categorized “connecting with purpose” as a rhetorical strategy because, when readers connected to the given purpose of the reading, they took a step “beyond the text itself.” See *id.*

67. Database is on file with *The Scholar: St. Mary’s Law Review on Minority Issues*.

percentage of time each student spent using the different reading strategies.<sup>68</sup>

#### IV. RESULTS OF PRESENT STUDY

The data from the present study illustrated a relationship between the way in which the three law students with ADD read the judicial opinion and their law school success. Alexa and Kelsey, both HP students, read the case very differently than Baker, an LP student. Although the sample size of the present study was small, these results mirrored the results of the 2007 reading study. In both studies, the more successful law students read the case using a higher percentage of problematizing and rhetorical reading strategies, and the less successful students tended to rely primarily on default reading strategies. This section will describe the present study results in more detail.

Alexa, a second-year law student in the top five percent of her class, spent 20.05% of her reading time using default reading strategies, 26.32% of her time using problematizing reading strategies, and 54.23% of her time engaged in rhetorical reading strategies.

Kelsey's reading protocol was similar. Kelsey was a first-year student in the top thirty percent of her law school class. Kelsey spent 32.43% of her time using default reading strategies, 41.89% of her time using problematizing strategies, and 25.68% of her reading time using rhetorical reading strategies.

In contrast, Baker, a second-year student in the bottom fifteen percent of his class, spent most of his reading time (67.19%) using default reading strategies, 14.06% of his time using problematizing reading strategies, and 17.19% of his reading time using rhetorical reading strategies.

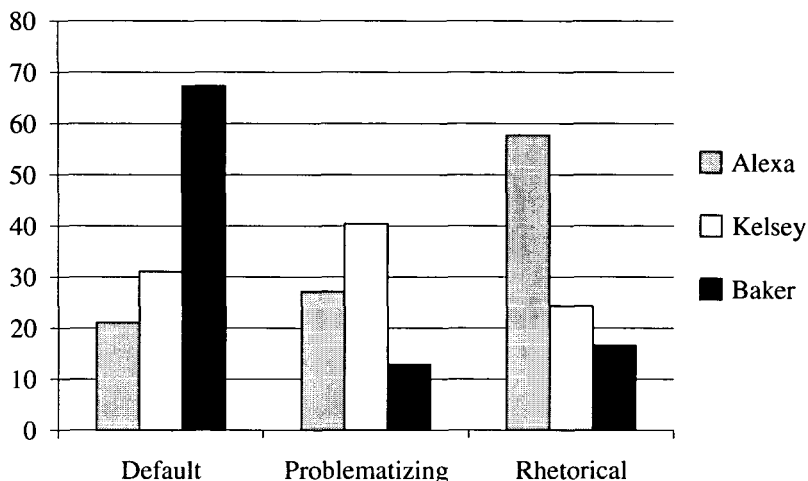
Table 3 provides a graphical comparison of the percentage of time Alexa, Kelsey, and Baker spent using the various reading strategies.

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68. In order to establish reliability estimates for the strategic moves selected for further investigation, I asked an independent coder to validate my coding strategy by analyzing several random transcripts to differentiate between the problematizing, default, and rhetorical responses.



TABLE 3: LAW STUDENTS WITH ADD: PERCENTAGE OF READING TIME USING READING STRATEGIES



Alexa and Kelsey spent the majority of their reading time using problematizing and rhetorical reading strategies and far less time using default reading strategies. Alexa spent 80.55% of her reading time using a combination of problematizing and rhetorical reading strategies. Kelsey spent 67.57% of her reading time using a combination of problematizing and rhetorical reading strategies. In contrast, Baker spent only 31.25% of his total reading time using problematizing and rhetorical reading strategies.

Further, Alexa and Kelsey spent much less time using default reading strategies than Baker. Alexa (medium line) spent only 20.05% of her reading time using default reading strategies. Kelsey (light line) spent 32.43% of her reading time using default reading strategies. In contrast, Baker (dark line) spent the majority of his total reading time (67.19%) engaged in default reading strategies.

#### A. *The Present Study Compared to the 2007 Reading Study*

The results of the present study are very similar to the results of the 2007 reading study, at least in terms of the percentage of time HP and LP students spent using the different reading strategies. Alexa and Kelsey read the judicial opinion similarly to the HP law students in the 2007

reading study.<sup>69</sup> Likewise, Baker read the case in almost the same way as the LP law students from the 2007 reading study.<sup>70</sup>

Like the HP group, Alexa and Kelsey spent minimal time using default reading strategies and spent the majority of their reading time using problematizing and rhetorical reading strategies. And, similar to the LP group from the 2007 reading study, Baker spent most of his reading time using default reading strategies and spent far less time using problematizing and rhetorical strategies.

Table 4 compares Alexa, Kelsey, and Baker with the HP and LP students from the 2007 reading study.

TABLE 4: COMPARISON OF THE PERCENTAGE OF READING TIME USING DIFFERENT READING STRATEGIES BETWEEN STUDENTS WITH ADD AND TRADITIONALLY LEARNING LAW STUDENTS

Participant		Class Rank	Default	Problematizing	Rhetorical
Alexa	(ADD)	Top 5%	20.05%	26.32%	54.23%
Kelsey	(ADD)	Top 30%	32.43%	41.89%	25.68%
<b>HP</b>	<b>(Non-ADD)</b>	<b>Top 50%</b>	<b>21.43%</b>	<b>45.70%</b>	<b>32.87%</b>
Baker	(ADD)	Bottom 15%	67.19%	14.06%	17.19%
<b>LP</b>	<b>(Non-ADD)</b>	<b>Bottom 50%</b>	<b>77.48%</b>	<b>12.54%</b>	<b>9.55%</b>

Comparing Alexa and Kelsey with the non-ADD HP group, Alexa spent 20.05% of her reading time using default strategies, Kelsey spent 32.43% of her time using default strategies, and the non-ADD HP students spent an average of 21.43% of their reading time using default reading strategies.

Alexa spent 26.32% of her time using problematizing strategies, Kelsey spent 41.89% of her time using problematizing strategies, and the non-ADD HP students spent an average of 45.70% of their time using problematizing reading strategies.

Finally, Alexa spent 54.23% of her reading time using rhetorical reading strategies, Kelsey spent 25.68% of her time using rhetorical reading strategies, and the non-ADD HP students spent an average of 32.87% of their reading time using rhetorical reading strategies.

Comparing Baker's reading with the non-ADD LP group yields similar results. Baker spent 67.19% of his reading time using default reading strategies, and the non-ADD LP students spent an average of 77.48% of their reading time using default reading strategies. Baker spent 14.06%

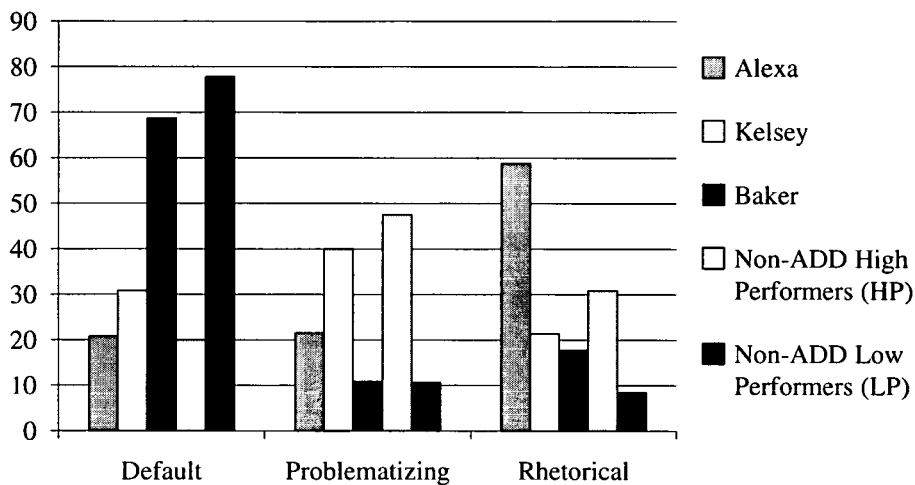
69. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 625 (2007).

70. *Id.*

of his reading time using problematizing reading strategies, while the non-ADD LP students spent an average of 12.54% of their time using problematizing strategies. Finally, Baker spent 17.19% of his reading time using rhetorical reading strategies, and the non-ADD LP students spent an average of 9.55% of their time using rhetorical reading strategies.

Table 5 presents this comparison graphically.

TABLE 5: ALEXA, KELSEY, AND BAKER COMPARED TO HP AND LP TRADITIONAL LEARNERS



In particular, note that both Baker and the non-ADD LP students spent the majority of their reading time using default reading strategies. In contrast, Alexa and Kelsey spent the majority of their reading time using both problematizing and rhetorical reading strategies, just like the non-ADD HP group from the 2007 reading study.<sup>71</sup>

The results of the present study support the results of the 2007 reading study. Those students who were more successful in law school read using more problematizing and rhetorical strategies than those who did not do as well. Further, those students who struggled in law school spent the majority of their reading time using default reading strategies.

The next part of this section will explore in more detail how Alexa, Kelsey, and Baker read the judicial opinion.

71. *Id.*

### B. *Alexa's Case Reading*

At the time Alexa participated in this study, she had just completed her second year of law school.<sup>72</sup> Alexa was ranked as one of the top ten students in her class and entered law school with an LSAT score of 155. Alexa was diagnosed with ADD in her junior year of high school, and although she had problems with reading during elementary school, she found ways to compensate for her disability throughout her primary and secondary education. She was diagnosed with ADD following a visit to a counselor for Post-Traumatic Stress Disorder related to a car accident. While taking various multiple-choice personality inventories, the counselor noted that it took Alexa a significant amount of time to answer the questions. The counselor suggested that Alexa be tested for a learning disability. She subsequently was tested and diagnosed with ADD. Alexa requested and received disability accommodations for the LSAT exam. She also requested testing accommodations for her learning disability in law school, although she was conflicted about this decision.<sup>73</sup> She explained:

I didn't tell anyone my first year [about my disability] because I was embarrassed. And then getting good grades makes me more embarrassed because I don't feel like [the accommodations are] warranted.<sup>74</sup>

Alexa worked extremely hard in law school and acknowledged that it took her longer to complete study tasks than other students. She reported:

I definitely think it took me longer [than other students to complete assignments] the first year. I definitely think first year I put more effort into it. This year . . . I haven't been putting as much effort. But then I pull [all-nighters]. So, it's kind of like I've kind of reverted back to [college].<sup>75</sup>

Alexa used many of the reading strategies adopted by most successful law students. She spent 20.05% of her reading time using default reading

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72. This narrative description was based upon Alexa's statements from our in-depth interview. All interview transcripts are on file with *The Scholar: St. Mary's Law Review on Minority Issues*.

73. Alexa received fifty percent additional time on her exams and took exams in a separate location than her peers. She also received note-taking accommodations during her first year.

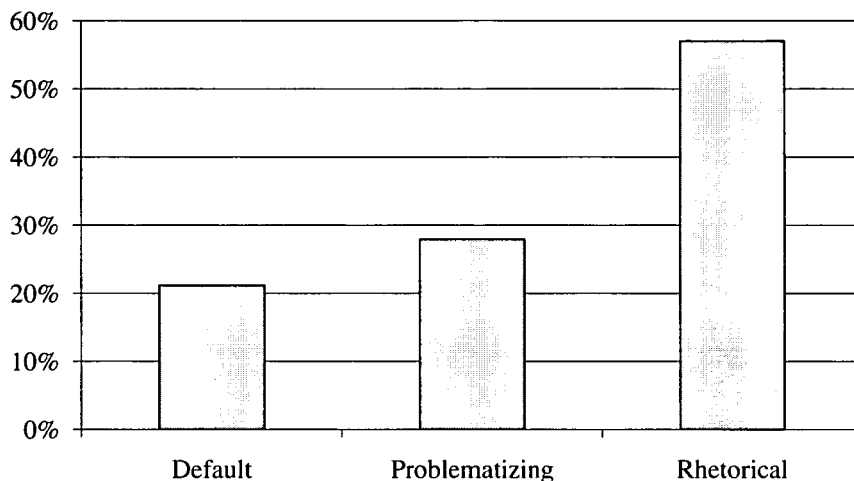
74. Transcript of Alexa's Interview at 6 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (discussing the negative effects felt by students with learning disabilities).

75. *Id.* at 8.

strategies, 26.32% of her time using problematizing reading strategies, and 54.23% of her time engaged in rhetorical reading strategies.

Table 6 represents the percentage of time Alexa spent using the various reading strategies.

TABLE 6: ALEXA'S USE OF READING STRATEGIES



For example, when Alexa first approached the opinion, she placed the case in context by noting the name of the court. Alexa reread the text frequently as she moved through the opinion to make sure she understood each paragraph before moving on. In addition, Alexa read in a very non-linear fashion; she was flexible about the order and way in which she read. Initially, Alexa would make hypotheses about the court's reasoning, and she would read to confirm or deny her original hypothesis. If she hypothesized correctly, she would move on to the next section. If her original hypothesis was incorrect, she would page back and reread that section of the text.

The following is an excerpt from Alexa's think-aloud. Note how Alexa questions and hypothesizes shortly after she begins reading the decision; she is actively engaged in her reading of the case.<sup>76</sup>

*In the matter of Richard T. Thonert, Supreme Court of Indiana, April 22, 2000.*

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76. The case text being read aloud is indicated with italics. The think-aloud portion is indicated with bolded font. Coding of the Alexa's "moves" is indicated in brackets within the text of the think-aloud portion.

**I don't like reading the head notes. I find them confusing. What is this case about[?] [questioning] [A]ttorney discipline? [hypothesizing]**

*Disciplinary proceeding was brought against attorney in which disciplinary commission and attorney entered statement of circumstances and conditional agreement per discipline. The Supreme Court held the attorney's failure to disclose to appellate tribunal controlling authority, which was known to him and had not been disclosed by opposing counsel. It was directly adverse to his client's position and to advise client of the adverse authority warranted public reprimand and admonishment.*

**Ok. This is a PR case. [confirming hypothesis]**

*The respondent in this attorney disciplinary matter is charged with failing to disclose to an appellate tribunal controlling authority known to him not disclosed by opposing counsel that was directly adverse to his client's position. He also failed to advise his client of the adverse authority when his client was contemplating his legal options. This matter is presented to this court upon the disciplinary commission's and the respondent's statement of circumstances and conditional agreement per discipline.*

**So, this is a disciplinary matter so it goes straight to the Supreme Court of Indiana. [contextualizing] I am assuming [that's what happened]. [hypothesizing] I would think so. [making assumption]**

*[T]his matter is presented to this court upon the disciplinary commissions and . . .*

**I just [need to reread] that. [rereading] Ok.**

*That agreement is before us now for approval. Ok. So We note that our jurisdiction of this matter derives from the respondent's admission to the practice of law in the state of—in 1979.*

**So, he is an older lawyer that is up for discipline—ok. [contextualizing]<sup>77</sup>**

Like a real lawyer, Alexa reread different sections of the case as she needed to in order to fully comprehend the case. Alexa also connected to the purpose of the case reading as follows:

**Ok. So looking at [the opinion]. I'm going to have a meeting with a client [connecting to purpose] who has similar facts and my client is an attorney who withheld information or precedent in front of an appellate court. [connecting with purpose] So I would have to advise him that if the facts are similar that he would also be found to**

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77. Transcript of Alexa's Interview at 3 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

**violate rules 1.4 and 3.3.** [connecting to purpose] **Ok. Straightforward decision.** [evaluating] **I agree with the court.** [evaluating] **Good decision.** [evaluating]<sup>78</sup>

Alexa also evaluated the case like a lawyer, expressing her opinion that the court's decision was correct. In other studies on legal reading, students' strategies of hypothesizing, connecting to a purpose, reading actively, and evaluating correlated to success in law school.<sup>79</sup> Alexa engaged in a conversation with the text and, in so doing, she improved

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78. *Id.*

79. Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 625 (2007) (finding that higher-performing students read using more problematizing and rhetorical reading strategies than lower-performing students); Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 155 (1995) (finding that law students in the upper quartile of their class read using more problematizing strategies than law students in the lower quartile of their class); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008) (recognizing that the more successful legal writing students read more actively, paged back, and reread). The study also found that the students who took more extensive notes outside of class tended to be more successful. Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008). These outside notes included rewording and rephrasing certain arguments in the students' own words, as well as annotating cases. *Id.* The students who were least successful did not refer back to their class notes. *Id.*; Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 417 (1987) (finding that expert legal readers read less linearly than novice readers). Other differences between expert readers and novice readers were that novices did not look at details such as dates, judges' names, or courts. Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 417 (1987). Also, there was a difference in time allocation to parts of the text between experts and novices; novices tend to read at the same speed no matter which part of the case they are reading, whereas expert legal readers slow down for important parts of the text, while speeding through judicial ramblings. *Id.*; Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 140 (1997) (finding that the more successful students read actively). One of the more successful students from the alternative admissions program read the text like a professor. Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 151–52 (1997). As he read, "he tried to create a mental picture of what happened" and further tried to predict the outcome of the case. *Id.* The less successful student took a more mechanical approach to reading a case. *Id.* at 153; James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57, 61–62 (2002) (finding that law students read differently when given a role or purpose for reading). Expert readers are more likely to understand their own cognitive processes than are novices. James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57, 61 (2002).

her overall understanding of the case. Alexa's active reading of her cases likely contributed to her overall law school success.

### C. *Kelsey's Case Reading*

The second study participant was Kelsey.<sup>80</sup> At the time of the study, Kelsey had completed her first year of law school. Like Alexa, Kelsey was a high-performing student. Kelsey entered law school with a 155 on the LSAT and ended her first year in the top thirty percent of her law school class. Kelsey was originally diagnosed with ADD in elementary school, when teachers reported that Kelsey was "hyperactive" and distracted during school. Her mother took her to a therapist and Kelsey was placed on Ritalin. In order to channel her energy, Kelsey spent a lot of her time growing up engaged in physical activities like sports and dance. Kelsey disclosed that she faced many challenges and setbacks in her educational career. Kelsey stated that in any new educational transition, like between high school and college, she would experience initial periods of failure. Kelsey would then work to improve and she would eventually achieve success. For Kelsey, law school took a similar path. Kelsey did not request disability accommodations in law school and was very determined to succeed on her own without disclosing her disability to anyone. Although Kelsey had considerable difficulty with her first set of midterms, she worked exceptionally hard to figure out what she had done wrong.

Kelsey described her initial frustrations at figuring out how to study and learn in law school.

Well, it was really hard for me at first [in law school]. And I did really horrible when I first did midterms. . . . I was trying so hard to read everything and remember everything about every case. It was just like killing me. So, I got my grades back from [midterms] and it was like, "Gosh, I'm [stupid]. I shouldn't be here." And so, I had to go through and evaluate [what I was doing] and I talked to the academic advisor, and I just kind of stepped back and let them say, "O.K., what am I doing wrong?" . . . I realized I was kind of focusing on the wrong details and so I guess it kind of comes down to reading and [how] I was trying to read everything and remember everything . . . I think it became a lot easier [after] that. And I did really well on

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80. This narrative description was based upon Kelsey's statements from our in-depth interview. The transcript of Kelsey's interview is on file with *The Scholar: St. Mary's Law Review on Minority Issues*.

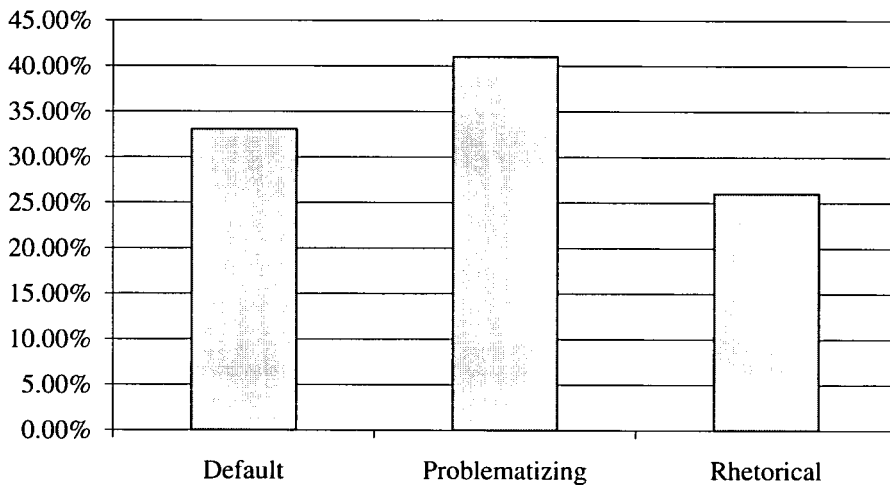


my finals but at the same time my grades weren't as great because I totally failed midterms.<sup>81</sup>

In examining Kelsey's reading protocol, it was clear that she was using many of the reading strategies used by successful law students, including contextualizing, questioning, and rereading. Kelsey spent 32.43% of her time using default reading strategies, 41.89% of her time using problematizing strategies, and 25.68% of her reading time using rhetorical reading strategies.

The following graph represents the percentage of time that Kelsey spent using the various reading strategies.

TABLE 7: KELSEY'S USE OF READING STRATEGIES



Like Alexa, Kelsey was actively engaged in the text. Kelsey placed the case in context by noting that the case was decided by a state court. Kelsey also worked to resolve her confusion as she read by initially creating a hypothesis and then reading further on in the text to either confirm or deny it.<sup>82</sup>

81. Transcript of Kelsey's Interview at 5 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

82. Kelsey did use a higher percentage of default reading strategies than Alexa did. I suspect that this is due to the fact that Kelsey was a first-year law student and Alexa was a second-year law student. Alexa, thus, had an additional year to become familiar with case reading such that she could more easily pass from default reading strategies into higher-level problematizing and rhetorical reading strategies.

Consider the following excerpt from Kelsey's think-aloud.<sup>83</sup>

*In the matter of Richard J. Thonert the Supreme Court of Indiana . . .*  
**It's a state jurisdiction case.** [contextualizing] **I don't really know**  
**what it's trying to say.** [voicing confusion] **I usually don't read . . .**  
**headnotes in their entirety.** [skipping] **So I'll come back to those if I**  
**need help.** [skipping] **I'm going to start with the case. So the attor-**  
**ney disciplinary matter.** [contextualizing]

*The attorney was charged with failing to disclose to a tribunal control-*  
*ling authority known to him.*

**So this guy has something to do with a disciplinary procedure.** [hy-  
 pothesizing] **I highlight what happened.** [highlighting] **This attor-**  
**ney and what is happening is [the] story of this case.** [hypothesizing]  
*He failed to give known authority and he also failed to advise his cli-*  
*ent of the adverse authority when his client was contemplating his legal*  
*options.*

**So that probably means he misrepresented the information to his cli-**  
**ent.** [synthesizing] **And, in his client's favor.** [synthesizing]<sup>84</sup>

Kelsey also used another effective reading strategy: she put the language of the case into her own words. This strategy helped Kelsey more clearly understand what was happening in the case. Notably, Kelsey spent a fair amount of time highlighting within the opinion.<sup>85</sup> As Kelsey explained during her interview, she used different colors of highlighting as a technique to help "trigger" her memory when she looked back on the case before class.<sup>86</sup>

The colors give me a point of reference . . . . It makes my mind think, "O.K., I know what that is." I don't have to read it once I color it. Once I color facts, I know what those facts are. Part of my process is [that when I] highlight them, [I'm] kind of saving them in my mind.

. . .

Pink are the rules. Underlining in pink [marks] a commentary rule. And then, purple is [the court's] reasoning. Blue is [the court's] holding and . . . order. Yellow is a fact. I have other colors. I have a light orange I use to represent a case that is [cited] in a case. And I

83. The case text being read aloud is indicated with italics. The think-aloud portion is indicated with bolded font. Coding of the student's "moves" is indicated in brackets within the text of the think-aloud portion.

84. Transcript of Kelsey's Interview at 1 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

85. She spent 14.86% of her total reading time noting that she was highlighting text.

86. Kelsey's reliance on "highlighting" the text, typically a default reading strategy, may also explain why Kelsey spent a higher percentage of her reading time using default reading strategies than Alexa (i.e., 32.43% versus 21.05%, respectively).

use a dark orange for procedural history. And I use red for dicta. And . . . I have a weird green color I use for my notes within a case.<sup>87</sup>

In addition, Kelsey created mental pictures or “cues” as she read. She would often comment to herself about what she was reading, and she often expressed her personal opinion about what happened in the case. Each of these techniques helped Kelsey stay engaged with her case reading.

A further example from Kelsey’s think-aloud is as follows:

*The respondent appealed that ruling alleging that his client had a right to withdraw the plea because due to absence of counsel at the time he entered it and the fact that the record did not reflect that but the trial court properly examined the client.*

**Ok. So that’s a relief.** [evaluating] **So this is a case about a stupid attorney . . .** [evaluating] **The respondent represented the defendant in Fletcher v. State so this seems like we’re actually getting more relevant about that it was actually [the same] attorney in that case.** [evaluating] **The support, the address, the same court, [and the same] questions that the respondent raised in his [client’s] case.** [synthesizing]<sup>88</sup>

Clearly, Kelsey felt comfortable expressing her own opinions about the case, for instance commenting about the “stupid” attorney. This was actually an effective technique that Kelsey developed over time. In her interview, she described how creating a story about the case helped her, despite her struggles with ADD.<sup>89</sup>

Kelsey’s reading techniques appear consistent with those techniques used by more successful law students.<sup>90</sup> Further, whereas many first-year

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87. Transcript of Kelsey’s Interview at 7 (on file with *The Scholar: St. Mary’s Law Review on Minority Issues*).

88. *Id.* at 2.

89. *Id.* at 4.

90. See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 625 (2007) (finding that successful law students read using more problematizing and rhetorical reading strategies); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN’S L. REV. 609, 670 (2008) (explaining the strategies employed by successful law students). Professor Anne Enquist found that the most successful legal writing students used reading strategies “that included a number of strategies for making the material their own.” Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN’S L. REV. 609, 670 (2008). Enquist reported: “There was an obvious connection between [the successful students’] critical reading and critical thinking skills. As they read a rule, they thought through why it exists; as they read arguments in the cases, they thought through the arguments that would give them the desired result in their case.” *Id.* The successful students conducted a more in-depth review of the reading, keeping track of questions that

law students might simply defer to a professor's interpretation of the case, Kelsey was willing to assume a more active role in relation to the outcome of the case. She had a strong opinion about whether the court was correct or incorrect. Again, these reading strategies—agreeing or disagreeing with the court and engaging actively with the text—are reading strategies used by successful law students and successful lawyers.<sup>91</sup>

#### D. *Baker's Case Reading*

The third participant in the study was Baker.<sup>92</sup> Baker was a second-year law student at the time of this study. He entered law school with an LSAT score of 148 and struggled during his first two years of law school. By the end of his second year, Baker's grades were in the bottom fifteen percent of his class. Baker was diagnosed with ADD in elementary school when his parents took him to a learning center because he had been experiencing academic problems in school. Baker struggled throughout his educational career and compensated for his learning disability by taking high school and college courses that focused on his academic strengths, as opposed to his weaknesses. Although Baker's family was supportive of his decision to go to law school, Baker felt a great deal of pressure to succeed. Baker described feeling the stigma of his learning disability in law school—he felt different from his peers. Baker was determined, however, to keep his disability hidden and did not request accommodations for his learning disability in law school.

To me . . . I don't want accommodations for my thing. I'll get the grades I get in the system the way it's designed. I don't want an accommodation. Part of that is because I fear that if I got the accommodation and I didn't do any better, then what is the consequence of that? I don't know, I haven't really thought about it.

If my skills aren't supported in law school in terms of grades then that's fine I'll walk out of there and say, "[Law school] doesn't support my skills and that doesn't bother me." I'm not gunning for the top job and six figures right out of law school. Perhaps the reason

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came to their minds while reading the cases. *Id.* The students also wrote notes to themselves concerning the potential uses of the case for both sides. *Id.*

91. See Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 BYU EDUC. & L.J. 53, 53 (finding that lawyers read differently than higher-performing law students by evaluating the decision and connecting with their prior experience).

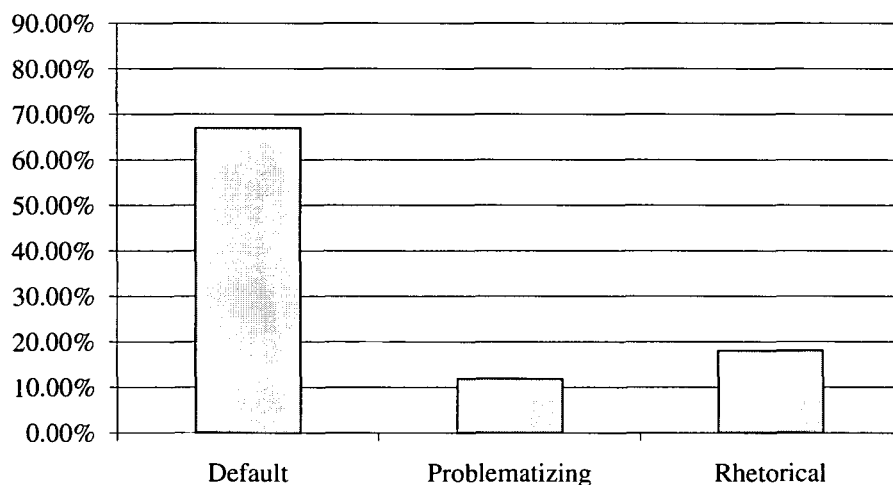
92. This narrative description was based upon Baker's statements from our in-depth interview. The transcript of Baker's interview is on file with *The Scholar: St. Mary's Law Review on Minority Issues*.

that I'm not gunning for one of those jobs is because I can't get the grades to get one. . . .<sup>93</sup>

In analyzing Baker's reading protocol, he had a more difficult time making sense out of the opinion. Baker's reading was more like the LP students from the 2007 reading study.<sup>94</sup> Like the LP students, Baker primarily used default reading strategies in 67.19% of his reading time; he spent 14.06% of his time using problematizing reading strategies and 17.19% of his reading time using rhetorical reading strategies.

The following graph represents Baker's use of the various reading strategies.

TABLE 8: BAKER'S USE OF READING STRATEGIES



Baker read primarily to decode the text—in other words, to understand the basic meaning of the words. As a result, Baker never seemed to get into a deeper analysis of the judicial decision.

The following is an excerpt from Baker's think-aloud.<sup>95</sup>

*In the Matter of Richard J. Thonert . . . . The Supreme Court of Indiana, August of 2000.*

93. Transcript of Baker's Interview at 12 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

94. See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 625 (2007) (describing the results of the 2007 reading study).

95. The case text being read aloud is indicated with italics. The think-aloud portion is indicated with bolded font. Coding of the student's "moves" is indicated in brackets within the text of the think-aloud portion.

**So I'd start from the beginning and I'll read through the case notes and start. So here we go. Ok. [reading silently] That first paragraph. "It's so ordered" at the bottom and basically two long sentences with a lot of words [commenting on difficulty] and I really don't know what I read so I'm going to have to read it again. [re-reading] I'm grabbing for something to mark it up in case I see a word or something that I want to latch onto. Ok. It looks like the attorney did something wrong and he didn't disclose some information he knew to opposing counsel and the appellate tribunal. [paraphrasing]**

...

**So "per curiam." [contextualizing] That is—I don't even know what that means. [voicing confusion] "per curiam." [rereading] I can't remember. [voicing confusion] I can't think of it right now. [voicing confusion] I have to look it up in my dictionary. . . . Anyway. I think originally I said this was about one attorney's failure to turn over something to another attorney. [summarizing]<sup>96</sup>**

Note how Baker struggled with the legal vocabulary in the opinion. Specifically, Baker struggled to understand the significance of a "per curiam" decision. Failing to understand the meaning of the words likely inhibited Baker's overall comprehension.

In addition, Baker took much longer to complete the overall reading task than either Alexa or Kelsey.<sup>97</sup> Because many of the words were unfamiliar to Baker, he had to reread the text frequently during his reading protocol. While rereading can be a helpful reading strategy for many students, it was clear that Baker read too slowly to keep up with the high volume of reading required in law school.

Here is a further example from Baker's think-aloud.

**I'm going to read this through and then read it again. [rereading] That's what I usually do. I read through it first and then go back and read it again. On 933 the first whole paragraph on the right hand side says that the *client had not made it knowingly, intelligently or voluntary*. [paraphrasing] Those terms are going to be I can't really think [voicing confusion] The footnote and I'm going right through it**

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96. Transcript of Baker's Interview at 1 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*). I believe that because "per curiam" is italicized, Baker takes special note of it. *Id.* Further, note Baker's tone of confusion when attempting to self-define the term. *Id.* Ultimately, Baker summarizes that he must look up the term in his dictionary. *Id.*

97. Alexa completed her reading protocol in approximately twenty-nine minutes, Kelsey took thirty-eight minutes to complete her reading protocol, and Baker took over sixty-five minutes to complete his reading protocol.

again. [rereading] I'd probably read it again and then go back through it. [rereading] Ok.

*Indiana Professional Conduct Rule.*

I'm highlighting [highlighting] probably some kind of regulation for this case. [noting aspect of structure] It takes place I think in Indiana. [contextualizing] Let me see here. [rereading] I can't remember. Yeah. [looking back] And so it's probably important [evaluating] and I'll read it over again. [rereading]<sup>98</sup>

Baker was working hard to move through the text, but his case reading was inefficient, which seemed to lead to significant frustration on his part.

Further, Baker's reading was noticeably slower than either Alexa's or Kelsey's reading. Slower reading poses two major threats to comprehension.<sup>99</sup> First, when students read slowly, they are forced to dedicate their mental efforts to other processes, such as decoding (figuring out the meaning of the text), which leaves fewer cognitive resources to be dedicated to understanding meaning.<sup>100</sup> This seemed particularly true for Baker, as he struggled with the meaning of the term "per curiam" in his case reading. Second, reading slowly taxes short-term memory; it becomes difficult for the reader to retain long and complicated sentences at slower reading rates, as opposed to faster speeds.<sup>101</sup> Baker may have suffered from this problem, and his choppy and hesitant reading may have posed significant practical challenges for him in law school.

## V. DISCUSSION

The results described above suggest three possible conclusions. First, the data suggest that Alexa and Kelsey, like the HP students from the 2007 reading study, may have been more successful in law school because they used more problematizing and rhetorical reading strategies. Problematizing strategies include reading strategies that help readers solve problems within the text. As one expert explains, "Readers use problem formation strategies to set expectations for a text. They ask themselves questions, make predictions, and hypothesize about developing meaning."<sup>102</sup> Various studies have associated the use of problematiz-

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98. Transcript of Baker's Interview at 1 (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

99. Lauren Capotosto, *Decoding and Fluency Problems in Poor College Readers*, Research to Practice #8, NAT'L COLL. TRANSITION NETWORK, Dec. 2008, <http://www.collegetransition.org/promising/rp8.html>.

100. *Id.*

101. *Id.*

102. Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 228-29 (1997).

ing strategies with HP student readers and expert/lawyer readers.<sup>103</sup> These readers ask questions, they talk back to the text, make predictions, hypothesize about meaning, and connect with the overall purpose of their reading.<sup>104</sup> In the present study, Alexa and Kelsey engaged in more of these active reading strategies than Baker and were more successful in law school overall.

Likewise, rhetorical reading strategies allow the reader to move through the text in an evaluative manner “or in a way that synthesizes what [is] being read with [the reader’s] own experiences.”<sup>105</sup> Rhetorical strategies “represented points where the reader . . . [took] a step beyond the text itself, [and was] concerned with constructing a rhetorical situation for the text, trying to account for the author’s purpose, context, and effect on the audience.”<sup>106</sup> Once again, Alexa and Kelsey used rhetorical reading strategies to their advantage—they both connected to the purpose of the reading and actively agreed or disagreed with the court’s decision.<sup>107</sup>

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103. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 155 (1995) (associating high performance with asking questions about the text’s meaning and structure). Students increase their reading skill when they incorporate the ability to problematize or analogize important parts of the text. *Id.* at 166; Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 417 (1987) (concluding that familiarity with the structure of a text may help a reader distinguish between important and unimportant text). Novices often fail to examine details like dates, courts, and judges’ names—all of which facilitate the reading process. Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407, 417 (1987). The ability to recognize nonessential dicta allows more advanced readers to speed through less important parts of a case while slowing down to focus on the points of law. *Id.* at 416–17; Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 158–59 (1997) (comparing the reading strategies of higher-performing students to those of lower-performing students). A major difference between the two sets of readers was the ability to assign meaning to certain texts. Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 158–59 (1997).

104. Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 22 READING RES. Q. 154, 159–60 (1995) (describing the reading strategies employed by more successful readers). This type of reading can be classified into three different types: verbal response, oral reading, and silent reading. *Id.* at 159. Often, the techniques were used non-sequentially—the reader would ask questions about what he hypothesized would be clarified later in the text. *Id.* at 160.

105. *Id.* at 161 (explaining that by synthesizing the text with personal knowledge, readers can gain a better understanding of the material).

106. *Id.* (footnote omitted). Contextualizing the text is another effective means of understanding reading materials. *Id.*

107. Prior reading studies have associated the use of rhetorical reading strategies with student success. Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Stu-*



In contrast, Baker struggled with his reading and also struggled in law school. For Baker, legal reading was difficult, slow, and often led to further confusion. Baker's ADD likely contributed to his reading challenges. In contrast, Alexa and Kelsey adopted reading strategies that facilitated effective legal reading, *despite* having ADD. In other words, they learned to compensate for their ADD by developing a new way to approach reading legal text.

The study results also suggest that ADD *can* inhibit effective legal reading if the law student with ADD has not learned reading strategies to compensate for his or her learning disability. Whereas Alexa and Kelsey found ways to work with their ADD, Baker seemed much more inhibited by his learning disability. Perhaps Baker was overly distracted as he read—a trait commonly associated with ADD.<sup>108</sup> Perhaps Baker's ADD prevented him from reading effectively because he was unable to use “a number of inter-related skills” when he read—a necessity for effective legal reading.<sup>109</sup> Baker read merely to decode the legal text; further, Baker was prone to reading errors. Research has shown that struggling readers tend to make more oral reading errors that affect the meaning of the text.<sup>110</sup> This danger is particularly acute in law school; if students misread or skip words as they read, they are at risk of miscomprehending the text. Baker, perhaps due to his ADD, seemed to struggle more with basic reading strategies.

Finally, the results of this study suggest that students with ADD can be very successful in law school if they take (and are given) the opportunity to learn effective reading strategies. Alexa and Kelsey were impressive students, both in terms of their academic success and in terms of their willingness to teach themselves how to learn effectively. Alexa and Kelsey took responsibility for learning *how* to read effectively. Further, they

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dents Admitted Through Alternative Admissions Programs, 83 IOWA L. REV. 139, 144 (1997). For example, Professor Oates concluded that the more successful students read with a purpose: a rhetorical reading strategy. *Id.* In contrast, students with weaker law school performance were more likely “to read simply to decode text.” *Id.* at 143.

108. Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 353 (2006).

109. RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 267 (2005) (describing the problems with slower reading speeds). An average college-level student reads approximately 250 words per minute. *Id.* at 268. An average student might be able to read a hundred-page assignment in about three hours, whereas a student reading about 150 words per minute would take almost six hours to complete the same assignment. *Id.* at 269. With practice, however, most people can increase their reading speed over a few months. *Id.*

110. Lauren Capotosto, *Decoding and Fluency Problems of Poor College Readers*, Research to Practice #8, NAT'L COLL. TRANSITION NETWORK, Dec. 2008, <http://www.collegetransition.org/promising/rp8.html>.

each acknowledged their learning differences and worked with these differences and not against them. Perhaps this is one of the most important lessons for law students who learn differently in law school: they must figure out *how* they learn most effectively in order to reach their academic potential.

## VI. READING STRATEGIES FOR LAW STUDENTS WHO LEARN DIFFERENTLY

Legal reading is a skill that all law students need to master in order to become successful students and future lawyers. Therefore, law students with ADD (or any learning disability) need to develop this skill as soon as possible after beginning law school.<sup>111</sup>

The present study results suggest that there is far more to legal reading than simply reading a judicial opinion quickly. In this study, all three law students with ADD reread the text frequently. But the real issue became one of reading *effectively*, not just reading quickly. Effective legal readers know what to pay attention to and what to let go of; in other words, they know what details are relevant to the decision and what details are irrelevant. In addition, effective legal readers use reading strategies that allow them to go beyond the mere words in any opinion into the analysis and reasoning of the court. Therefore, in order to maximize the effectiveness of their legal reading, I offer the following suggestions for law students who learn differently (and for the educators that teach them).

### A. *Does the Student Need Additional Reading Assistance?*

First and foremost, a law student with a learning disability who is experiencing significant challenges with legal reading needs to assess whether she needs additional reading help. A law student reads legal text well when the student uses "a number of inter-related skills . . . and . . . chooses among these skills wisely in light of the purpose of the reading being tackled."<sup>112</sup> If a student takes a very long time to complete reading assignments (and the student's reading speed does not improve within the first month of law school), additional help may be required.

Research has shown that poor readers make more oral reading errors<sup>113</sup> that can affect the meaning of text.<sup>114</sup> This danger is particularly

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111. If a student suspects that he or she may have some problems with legal reading, it is wise to get help as soon as possible. Law professors should support the student in making an appointment with the school's Academic Support Program or Student Services Office.

112. RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 267 (2005).

113. "Oral reading errors" occur when readers make errors while reading aloud.

acute in law school. If a student is misreading or skipping words while reading, the student is at risk of miscomprehending whatever is being read, which will negatively impact the student's learning in law school.

Further, if a student has been diagnosed with a learning disability, the student may be more prone to reading problems.<sup>115</sup> And it may not be enough that the student is a careful and accurate reader—successful law students must also be efficient readers so that they can devote their mental energies toward comprehending what they are reading.<sup>116</sup> Reading research illustrates that good readers store words and word parts in their memories as visual orthographic images.<sup>117</sup> Such storage allows readers to bypass the decoding stage to quickly retrieve words from memory.<sup>118</sup> For skilled readers, this process takes place within 250 milliseconds of encountering most words, and this automaticity allows a reader to move on.<sup>119</sup>

In contrast, as previously discussed, slower reading poses two major threats to comprehension. This can be particularly problematic in law school reading. In light of the typical law school workload, choppy and hesitant reading poses a very real and practical challenge. If a student is assigned sixty pages of reading per week in each course, this reading load is substantial for even the most effective legal reader. This amount of reading can be overwhelming for a law student with a slow reading rate. An average college student's reading rate is around 263 words per minute.<sup>120</sup> If a law student's reading speed is less than 250 words per minute when entering law school, the law student may need additional help to improve basic reading speed.<sup>121</sup>

### B. *How to Determine Your Reading Speed*

Law students with learning disabilities that struggle with legal reading should begin by assessing their average reading speed as soon as possible

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114. Lauren Capotosto, *Decoding and Fluency Problems of Poor College Readers*, Research to Practice #8, NAT'L COLL. TRANSITION NETWORK, Dec. 2008, <http://www.collegetransition.org/promising/rp8.html>.

115. Students with ADD may process information differently and/or see the text differently than traditionally learning students.

116. Lauren Capotosto, *Decoding and Fluency Problems of Poor College Readers*, Research to Practice #8, NAT'L COLL. TRANSITION NETWORK, Dec. 2008, <http://www.collegetransition.org/promising/rp8.html>.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 268 (2005). McKinney suggests that slower readers seek additional help to improve their reading speed. *Id.*

after beginning law school. Professor Ruth Ann McKinney describes a simple and effective technique.<sup>122</sup> Choose something around the house that you would like to read (although it should not be law-related because the reading level will be too difficult) and that you have not read before.<sup>123</sup>

Read for five minutes and accurately time yourself, or have a friend do so, and mark where you started and where you stopped in the text.<sup>124</sup> Calculate how many words you read in total and divide by five: this number is your average number of words per minute.<sup>125</sup> If you are reading less than 250 words per minute, you will likely need to increase the speed of your reading in general.<sup>126</sup>

Luckily, many law schools are associated with university campuses, and most campuses have reading centers and specialists that can help students.<sup>127</sup> If your law school does not have access to a formal reading center, you can use a more generalized reading strategy book with exercises to help improve reading speed.<sup>128</sup> In a period of a few months, students can significantly improve their reading speeds by simply doing these types of exercises.<sup>129</sup> As a law student's reading speed increases, the student will have more time to begin using the reading strategies used by successful law students, particularly problematizing and rhetorical reading strategies.

### C. *Read Like the Most Successful Law Students*

Finally, law students who learn differently should try to adopt the reading strategies used by the most successful law students. In the present study and in the 2007 reading study, the more successful law students seemed to read the text differently than struggling law students in several important ways, regardless of whether these students learned traditionally or had been diagnosed with ADD. First, more successful law students more frequently "connected with the purpose" of the case. Second, the more successful law students established the "context" of the case before they began to read. Third, the more successful law students worked actively to "resolve their confusion" before they moved on to another section of the case. Fourth, and finally, the more successful law

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122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 267 (2005).

127. *Id.*

128. *Id.*

129. *Id.*

students—both traditionally learning and those diagnosed with ADD—spent more of their reading time using problematizing and rhetorical reading strategies than default reading strategies.

The remainder of this section offers additional suggestions to help law students who learn differently maximize their legal reading success.

### 1. Connect to a Purpose

In the present study, those students who connected to the purpose of the case reading (e.g., preparing for a client meeting) were more engaged and active in their case reading overall. I found that when students internalized a purpose for reading other than simply reading the case in preparation for class, they read differently. The students read the facts of the opinion more closely (e.g., to determine whether their client's case might be analogous to the facts of the opinion), the students noted case details more accurately, and they noted the procedural posture of the case more consistently.

Law professors need to encourage their students to read with a purpose whenever possible. Short, focused reading is more beneficial than hours spent in the library staring at legal text. I believe that students with learning disabilities will retain more information when they actively read a judicial opinion with a purpose. Students can assign themselves a purpose on their own—for instance, pretend they are the defendant's lawyer or the appellant or the judge. Their professors can also assign them a purpose as well. The point is that active, focused reading improves a law student's overall comprehension and retention of important details.

### 2. Establish the Context of the Case

In both reading studies, I also found that the more successful law students paid closer attention to the context of the case they were reading. Specifically, as they read the case, successful law students noted which court wrote the decision, the year of the decision, and the historical and legal significance of the decision. All law students, but particularly law students who learn differently, need to establish the context of the case before they read. Students need to know *why* they are reading the case. Why is the case in the casebook at that particular place? For what legal proposition does the case stand? Knowing the context of the case means understanding the specifics of the particular case and why the case is important within the larger context of the course. For law students who learn differently, knowing the context of the case before beginning to read can be a very useful strategy to read more efficiently.

### 3. Resolve Any Confusion Before Reading On

In addition, I noticed that successful law students resolved their confusion before they moved on to another part of the case. In other words, when these students, including law students with ADD and traditionally learning law students, became confused as they read, they would page back and figure out the answer to their questions before moving on to the next paragraph. In contrast, struggling law students tended to leave their questions hanging. Instead of figuring out the answers, the less successful students simply moved on through the text, hoping that the opinion would eventually make sense in the end.

For law students with learning disabilities, there may be many challenging aspects to reading a judicial opinion, particularly at the beginning of law school. Thus, law students who learn differently need to try and resolve their confusion early on in their case reading. Beginning a case reading with questions will only lead to further confusion in the end. It is important to take the time to resolve initial confusion before moving on to the next paragraph in a case.

### 4. Don't Get Stuck Using *Only* Default Reading Strategies

Finally, I would encourage law students who learn differently to push themselves to move beyond using *only* default reading strategies. In my research, struggling law students, both traditionally learning and those diagnosed with ADD, relied too heavily on default reading strategies. In other words, these students spent the majority of their reading time highlighting text, paraphrasing, or writing notes in the margin. In contrast, the more successful law students, both traditionally learning and those diagnosed with ADD, used a variety of reading strategies throughout their reading protocols. Further, the more successful law students questioned the decision as they read; they evaluated the results of the case, and they considered the implications of the rule of law as applied to the facts.

Although law students certainly need to be able to articulate the facts, issues, and holdings of any case, they also need to understand how the case relates to the other cases they have read in the class. Was the decision correctly decided? How does the case change the law? Using problematizing and rhetorical strategies in addition to default reading strategies allows law students to go deeper into the court's analysis. Ensuring that law students who learn differently are encouraged to ask questions, hypothesize, and evaluate the cases as they read will enable them to read cases more deeply and analytically. These are precisely the types of analytical skills we want law students develop.

## VII. CONCLUSION

The new reality in legal education is that a certain percentage of law students will come to law school with ADD or with another learning disability, either disclosed or undisclosed. This study examined how three law students with ADD read a judicial opinion. Although the sample size was small, the results suggested a relationship between successful law school performance and the use of problematizing and rhetorical reading strategies. The results also suggested a relationship between less successful law school performance and the use of default reading strategies. Interestingly, the fact that Alexa and Kelsey had been diagnosed with ADD did not seem to affect the types of reading strategies they utilized most frequently. Further, Alexa and Kelsey read the opinion similarly to the HP students in the 2007 reading study. In contrast, Baker's ADD seemed to negatively affect his law school performance, in part, because Baker read slowly and relied too heavily on default reading strategies. Also notable was the fact that Baker read the opinion similarly to the LP students in the 2007 reading study.

Therefore, at a minimum, the present study confirms that legal reading is very important to a law student's academic career, and legal reading is particularly important to a student who has ADD or another learning disability. Law students with learning disabilities can succeed in law school if legal education adequately supports their learning—in other words, if legal educators adopt teaching and learning methodologies that support all learning styles and modes of learning. Our mission should be to equip the next generation of lawyers with the tools they need to practice law competently and professionally. If we undertake this mission seriously, then we must embrace the learning of *all* law students, not just those who fit the traditional mold. If we can accomplish this task, we will produce better law students—and better lawyers as well.

